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DARBY & DARBY
805 THIRD AVENUE
NEW YORK, NY 10022

In re Application of :
Roland Seebacher, et al. :
Application No. 08/135,059 :
Filed: October 12, 1993 :
For: POWER TRANSMITTING APPARATUS :
WITH FLUID COUPLING :

**DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT**

This is a decision on the applicants' petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on March 26, 2003. The delay in deciding this petition is sincerely regretted.

The petition is **DISMISSED**.

A review of the file record indicates that in response to a final rejection mailed July 9, 1996 applicants filed a Notice of Appeal on October 2, 1996. The Notice of Appeal extended the time period for filing the Appeal Brief (i.e. the time period for reply) to December 2, 1996. Under 37 CFR 1.136(a) this non-statutory time period for reply may be extended by up to five months to May 2, 1997. Applicants filed a first submission under 37 C.F.R. 1.129(a) (Transitional Procedures for limited examination after final rejection and restriction practice) received on April 2, 1997 with a certificate of mail date of March 27, 1997.

The rule states that applicants are entitled to such a submission after final rejection provided the application has been pending for at least two years as of June 8, 1995 (effective date of 20 year patent term legislation) taking into account any reference made in the application to any earlier filed application under 35 U.S.C. 120, 121 and 365(c).

Applicants' U.S. filing date is October 12, 1993 which is less than the two year requirement. Although applicants claim a foreign priority date to October 12, 1992, under 35 U.S.C. 119, Rule 1.129(a) does not provide for such an exception. Therefore applicants response under 37 C.F.R. 1.129(a) received April 2, 1997 was improper. The proper response to the Final rejection mailed July 9, 1996 should have been an Appeal Brief or a request for a continuing application.

Because abandonment takes place by operation of law for failure to properly reply to an Office action, and not by operation of the mailing of a Notice of Abandonment, the application is held as abandoned as of May 2, 1997, the seven month maximum date pursuant to 37 C.F.R. 1.136(a), from the filing of the Notice of Appeal on October 2, 1996. All subsequent responses and communications filed after May 2, 1997 are considered to be moot.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181."

A handwritten signature in cursive script, reading "Randolph A. Reese", written over a horizontal line.

Randolph A. Reese
Special Programs Examiner
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RAR/cps: 5/24/04